

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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KA 07-01643

PRESENT: HURLBUTT, J.P., MARTOCHE, SMITH, CENTRA, AND PERADOTTO, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

KEITH R. LORE, DEFENDANT-APPELLANT.

D.J. & J.A. CIRANDO, ESQS., SYRACUSE (BRADLEY E. KEEM OF COUNSEL), FOR DEFENDANT-APPELLANT.

EDWARD M. SHARKEY, DISTRICT ATTORNEY, LITTLE VALLEY, FOR RESPONDENT.

Appeal from a judgment of the Cattaraugus County Court (Larry M. Himelein, J.), rendered February 20, 2007. The judgment convicted defendant, upon his plea of guilty, of attempted rape in the first degree.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: On appeal from a judgment convicting him upon his plea of guilty of attempted rape in the first degree (Penal Law §§ 110.00, 130.35 [4]), defendant contends that he did not knowingly, intelligently and voluntarily waive his right to appeal. We reject that contention (*see People v Ball*, 20 AD3d 925, *lv denied* 5 NY3d 850; *People v Chrispen*, 306 AD2d 916, *lv denied* 100 NY2d 619). The valid waiver by defendant of the right to appeal encompasses his challenge to the severity of the sentence (*see People v Hidalgo*, 91 NY2d 733, 737). Defendant's challenge to the factual sufficiency of the plea allocution is also encompassed by the valid waiver of the right to appeal (*see Ball*, 20 AD3d 925) and, in any event, defendant failed to preserve that challenge for our review (*see People v Lopez*, 71 NY2d 662, 665). Finally, we note that the certificate of conviction incorrectly reflects that defendant was convicted of rape in the first degree under Penal Law § 130.35 (4), and it must therefore be amended to reflect that he was convicted of attempted rape in the first degree under Penal Law §§ 110.00 and 130.35 (4) (*see People v Martinez*, 37 AD3d 1099, *lv denied* 8 NY3d 947).

Entered: February 11, 2009

JoAnn M. Wahl
Clerk of the Court